

REMARKS

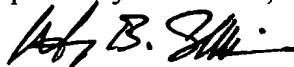
The only issue in the Office Action mailed August 10, 2004, is the single rejection of all pending claims under 35 U.S.C §102(b) over Bodelin-LeComte '652. Reconsideration of this rejection is respectfully requested. As has been discussed previously, e.g., in the Reply filed October 21, 2003, (prior to the first allowance of this application), the present composition represents a food or orally ingestible pharmaceutical product, which is colored by the use of a pearlescent or interference pigment. The present claims have been clarified and divided into two sets. Claims 1 - 19 are directed to food products, while claims 20 - 37 are directed to orally ingestible pharmaceuticals. That the present application encompasses "orally ingestible" pharmaceuticals is evident from the specification, for example, at page 1, lines 28 - 31, page 2, lines 24 - 29 and page 6, lines 27 - 32. Of course, explicit support for the claimed language "orally ingestible" is not required by law, see, for example, *In re Wertheim*, 541 F.2d 257, 191 U.S.P.Q. 90 (CCPA 1976).

Bodelin-LeComte fails to suggest the production of foods, whatsoever. Similarly, patentees fail to teach orally ingestible pharmaceuticals colored by pearlescent or interference pigments. The only disclosure of pharmaceuticals is the statement, at column 1, lines 7 - 9, that the "composition according to the invention may be used in the cosmetic, dermatological, pharmaceutical and hygiene fields." However, the entirety of the patented disclosure is directed to materials which are applied to the body topically, not ingested therein. For example, patentees disclose cosmetics, see column 4, lines 58 - 61 and column 5, lines 31 - 36. Patentees disclosure of "vitamins" at column 4, line 66, is stated to be as an additive in the cosmetics field, i.e., presumably such as vitamin E which is a common ingredient in lotions. The only "pharmaceutical" disclosed specifically in the patent is "foot powder", at column 5, lines 35 - 36. It is thus readily evident that patentees do not contemplate that their materials are to be ingested, such as in an orally ingestible pharmaceutical, much less used to color a food. It is submitted that all of the claims of the present application, claims 1 - 19 directed to foods, and claims 20 - 37 directed to orally ingestible pharmaceuticals, are not anticipated by patentees disclosure. Withdrawal of the rejection is therefore respectfully requested.

It is submitted that the present application is once again in condition for allowance, and passage to issue is respectfully requested. However, should the Examiner have any questions or comments, she is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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